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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,852	01/16/2004	Quenton Lanier Gilbert	037-0012	8743
22120	7590	08/09/2006	EXAMINER	
ZAGORIN O'BRIEN GRAHAM LLP 7600B NORTH CAPITAL OF TEXAS HIGHWAY SUITE 350 AUSTIN, TX 78731			FERGUSON, KEITH	
			ART UNIT	PAPER NUMBER
			2617	

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/759,852	GILBERT, QUENTON LANIER	

  

<b>Examiner</b>	<b>Art Unit</b>
Keith T. Ferguson	2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 18 January 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-26 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-26 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION**

1. The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 2617.

***Claim Rejections - 35 USC § 112***

2. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 18 recites the limitation "the entry" in line 1. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1,3,6,9-11,22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Avalos et al..

The claimed invention read on Avalos et al. as follows:

Regarding claims 1,6 and 10, Avalos et al. discloses a method (fig. 6a) for communicating short messages comprising (fig. 6a

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and P:0037 line 1 through P:0038 line 7): forwarding a SMS delivery point to point message (smsdptpt) (e-mail message) (electronic message) (P:0028 lines 17-19) to a first communications device (17) (fig. 6a number 610), the forwarding in response to at least an indication of busy not responding (unsuccessful delivery) of a short message (fig. 6a number 560) to a destination communications device (27) (fig. 6a).

Regarding claim 3, Avalos et al. discloses the forwarding is enabled from the destination communications device (P:0007 lines 1-5).

Regarding claim 5, Avalos et al. discloses the forwarding is enabled from the internet (web browser) (P:0028 lines 1-21).

Regarding claims 9 and 24, Avalos et al. discloses removing the short message from a short message queue (HLR 19) (P:0037 lines 8-13).

Regarding claim 11, Avalos et al. discloses receiving the short message (fig. 6a number 560), and attempting to send the short message to the destination communications device (fig. 6a number 590).

Regarding claim 22, Avalos et al. discloses a MSC1/VLR1 (computer program product encoded in one or more computer readable media selected from the set of disk, tape, or other

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magnetic, optical, or electronic storage medium) (fig. 6a number 21), the computer program product executable including instructions for forwarding an electronic message (fig. 6a number 610) to a first communications device (fig. 6a number 17) the forwarding in response to at least an indicator of unsuccessful delivery of the short message to a destination communications device (fig. 6a number 27).

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 12,15-21,25 and 26 are rejected under 35

U.S.C. 102(e) as being anticipated by Hatch.

The claimed invention reads on Hatch as follows:

Regarding claims 12,15-17,19,20, and 21, Hatch discloses a system for communicating short messages (fig. 1) comprising: a short message management facility (2) that communicates an

electronic message to a first communications device (11) in response to an indicator of an unsuccessful delivery of the short message to a destination communications device (3) (P:0026 line 1 through P:0033 line 13).

Regarding claim 13, Hatch discloses a destination communications device (11) for receiving at least one short message from the short message management facility (P:0026 line 1 through P:0028 line 3).

Regarding claim 14, Hatch discloses a first communications device (11) for receiving at least one electronic message from the short message management facility (P:0026 line 1 through P:0028 line 3).

Regarding claim 18, Hatch discloses entry includes information for formatting the electronic message (P:0026 line 1 through P:0027 line 13).

Regarding claim 25, Hatch discloses an apparatus (fig. 1) for communicating short messages (fig. 1) comprising: means for forwarding an electronic message to a first communications device (11) (P:0026 line 1 through P:0033 line 13), the forwarding in response to at least an indicator of unsuccessful delivery of a short message to a destination communications device (3) (P:0026 line 1 through P:0033 line 13), and a user

informs network (means) for enabling the means for forwarding  
(P:0026 lines 7-11).

Regarding claim 26, Hatch discloses means for formatting the electronic message as a message having a format compatible with the first communications device (P:0027 line 1 through P:0028 line 3).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Avalos et al. in view of Evans et al..

Regarding claim 2, Avalos et al. discloses a method as discussed supra in claim 1 above. Avalos et al. differs from claim 2 of the claimed invention in that it does not disclose the communications device is incompatible with short message service (SMS). Evans et al. teaches a communication terminal that is SMS incapable (P:0025 lines 4-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Avalos et al. with the communications device is incompatible with short message service (SMS) in order for the message center to convert a reply message to SMS form from the destination terminal, as taught by Evans et al..

10. Claims 4, 7, 8 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Avalos et al. in view of Kransmo et al..

Regarding claim 4, Avalos et al. discloses a method as discussed supra in claim 1 above. Avalos et al. differs from claim 4 of the claimed invention in that it does not explicit disclose the forwarding is enabled from the first communications device. Kransmo et al. teaches forwarding is enable from an originating station (180) (P:0030 line 1 through P:0031 line 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Avalos et al. with the forwarding is enabled from the first communications device in order for the message center to request SMS call forwarding service when the destination mobile station is busy or not responding, as taught by Kransmo et al..

Regarding claims 7 and 23, Avalos et al. discloses a method as discussed supra in claims 1,6 and 22 above. Avalos et al. differs from claims 7 and 23 of the claimed invention in that it does not explicit disclose formatting the electronic message as a message having a format compatible with the first communications device. Kransmo et al. teaches formatting a mode that is compatible with originating mobile station (180) (P:0030 line 1 through P:0031 line 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Avalos et al. with formatting the electronic message as a message having a format compatible with the first communications device in order for the message center and the destination mobile station to comply to text message capability and text messaging standards for reliable communication, as taught Kransmo et al..

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Regarding claim 8, Avalos et al. discloses the first communications device is the destination communications device (fig. 6a number 610).

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith T. Ferguson whose telephone number is (571) 272-7865. The examiner can normally be reached on 6:30am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on (571) 272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Keith Ferguson  
Art Unit 2617  
August 4, 2006

KEITH FERGUSON  
PRIMARY EXAMINER  
